IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE A.K.BASHEER

WEDNESDAY, THE 17TH OCTOBER 2007 / 25TH ASWINA 1929

WA.No. 2427 of 2007
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(AGAINST THE JUDGMENT DATED 20.08.2007 IN W.P.C. 25184/2007)

APPELLANT: PETITIONER
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PUSHPARAJAN USHA, ARCHITECT,
OFFICE OF THE CHIEF ARCHITECT,
PUBLIC WORKS DEPARTMENT,
TRIVANDRUM.

BY ADV. SRI.N.NANDAKUMARA MENON

RESPONDENTS: RESPONDENTS
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1. STATE OF KERALA, REPRESENTED BY THE
SECRETARY TO GOVERNMENT, PUBLIC WORKS DEPARTMENT,
SECRETARIAT, TRIVANDRUM.

2. THE CHIEF ARCHITECT,
PUBLIC WORKS DEPARTMENT,
PUBLIC OFFICE, TRIVANDRUM.

BY GOVT PLEADER SRI BENNY GERVASIZ

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD
ON 10/10/2007, THE COURT ON 17/10/2007 DELIVERED THE
FOLLOWING:

K.S. RADHAKRISHNAN & A.K. BASHEER, JJ.

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Writ Appeal No 2427 of 2007

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Dated: 17th October 2007

JUDGMENT

Radhakrishnan, J.

Writ petition preferred by the appellant would go at the threshold when we apply the principles laid down by the apex court in U.P. Jal Nigam and another v. Jaswant Singh and another (2006) 11 S.C.C. 464), A.P. Steel Re-rolling Mills Ltd v. State of Kerala and others (2007) 2 SCC 725) and other reported cases. Learned single judge rightly did so and dismissed the writ petition on the ground of delay and laches.

2. Appellant was appointed as Architectural Head Draftsman by order dated 29.12.1993 along with one Satheesan who claimed that his appointment should be with effect from 7.11.1988. When the request was rejected he filed O.P. No 9228 of 1995 before this court which was disposed of directing the Government to pass appropriate orders. Governemnt passed Ext P1 order dated 17.4.1996 holding that Satheesan should be deemed to be appointed as Architectural Head Draftsman with effect from 7.11.1988 for the limited purpose of reckoning the period from 7.11.1988 to

28.12.1993 for pension. Appellant after the expiry of four years from the date of Ext P1 order preferred Ext P2 representation dated 26.4.2000 claiming similar benefit extended to Satheesan by Ext P1 order. She did not pursue the matter further. Satheesan had also filed O.P. No 1146 of 1997 claiming that he is entitled to all service benefits for the period from 7.11.1988. That original petition was allowed by Ext P5 judgment dated 3.10.2005. Government passed Ext P6 order on 13.02.2007 giving effect to the judgment. Appellant noticing that, submitted Ext P7 representation dated 8.11.2006 seeking similar benefit which was extended to Satheesan as per Ext P5 judgment as well as Ext P6 government order.

3. Appellant in our view has slept over his rights. She is now claiming a benefit which is stated to have been accrued to her from 1988 onwards. Satheesan and the appellant were appointed on the same day. Appellant did not pursue her remedies as was done by Satheesan. Appellant preferred representation for the first time on 26.4.2000, after four years of Ext P1 order. Matter was delayed further. Appellant did not pursue Ext P2 representation. She woke up again only by filing representation dated 8.11.2006. Apex court in U.P. Jal Nigam's case, supra held as follows:

> "The question of delay and laches has been examined by this court in a series of decisions and laches and delay has been

considered to be an important factor in exercise of the discretionary relief under Article 226 of the Constitution. When a person who is not vigilant of his rights and acquiesces with the situation, can his writ petition be heard after a couple of years on the ground that same relief should be granted to him as was granted to person similarly situated who was vigilant about his rights and challenged his retirement which was said to be made on attaining the age of 58 years. .... .... ..... The respondents are guilty since the respondents have acquiesced in accepting the retirement and did not challenge the same in time. If they would have been vigilant enough they could have filed writ petitions as others did in the matter. Therefore, whenever it appears that the claimants lost time or whiled it away and did not rise to the occasion in time for filing the writ petitions, then in such cases the court should be very slow in granting the reliefs to the incumbent. Secondly, it has also to be taken into consideration the question of acquiescence or waiver on the part of the incumbent whether other parties are going to be prejudiced if the relief is granted. In the present case, if the respondents would have challenged their retirement being violative of the provisions of the Act, perhaps the Nigam could have taken appropriate steps to raise funds so as to meet the liability, but by not asserting their rights the respondents have allowed time to pass and after a lapse of couple of years, they have filed writ petition claiming the benefit for two years. That will definitely require the Nigam to raise funds which is going to have serious financial repercussions on the financial management of the Nigam."

Further in A.P. Steel Re-Rolling Mills' case, the apex court held as follows:

"The benefit of judgment is not extended to a case automatically. While granting relief in a writ petition, the High Court is entitled to consider the fact situation obtaining in each case including the conduct of the petitioner. In doing so, the Court is entitled to take into consideration the fact as to whether the writ petitioner had chosen to sit over the matter and then wake up after the decision of this court. If it is found that the appellant approached the court after a long delay, the same may disentitle him to obtain a discretionary relief."

We are of the view, the above mentioned principles would squarely apply to the facts of this case, so found by the learned judge as well and in our view rightly. In such circumstances we find no reason entertain the claim raised by the appellant because of laches and delay on her part. Appeal therefore lacks merits and the same is dismissed.

Sd/-
K.S. RADHAKRISHNAN
Judge

Sd/-
A.K. BASHEER
Judge

17/10/2007
en/

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